Supreme Court, U.S.
FILED
DEC 1 - 2003
OFFICE OF THE CLERK

No. 03-685

IN THE
Supreme Court of the United States

ABOLALA SOUDAVAR,

Petitioner,

v.

ISLAMIC REPUBLIC OF IRAN;
BONYAD-E MOSTAZAFAN VA JANBAZAN;
SABT-E AHVAL-E KOLL-E KESHAVAR;
AND HOJJATOL-ESLAM NAYYERI,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

RESPONDENTS' BRIEF IN OPPOSITION

BRUNO A. RISTAU
Counsel of Record
LAW OFFICES OF
BRUNO A. RISTAU, P.L.L.C.
4500 Foxhall Crescents, N.W.
Washington, D.C. 20007
(202) 965-3810

STATEMENT OF THE CASE

Petitioner ("Soudavar") is an Iranian national who entered the United States in 1983 and now resides in Houston, Texas. In October 2000 he brought the instant *pro se suit for* compensation for a claimed 1993 nationalization in Iran of several parcels of land owned by him and his family. He named as defendants the Islamic Republic of Iran ("Iran"); an Iranian non-profit entity to which the properties were allegedly transferred ("Bonyad-E"); a land-registration office that recorded the title transfers ("Sabt-E"); and the chief judge of the Revolutionary Court who confirmed the nationalization measure ("Nayyeri") .

Soudavar sought to vest subject matter jurisdiction in the district court under the "direct effect" clause of the commercial jurisdiction section of the Foreign Sovereign Immunity Act ("FSIA"), 28 U.S.C.§1605(a)(2); under the Iran/United States Treaty of Amity;[1] and under the Alien Tort Claims Act, 28 U.S.C.§1350.

The district court ruled that none of the jurisdictional provisions on which Soudavar relied conferred subject matter jurisdiction on the court. Recalling that *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 434 (1989), established incontrovertibly that the FSIA provides the sole jurisdictional basis for suits against foreign states, and finding that none of the sources identified by Soudavar vested subject matter jurisdiction, the court granted Iran's motion to dismiss for lack of competence. The district court specifically rejected Soudavar's reliance on the FSIA's commercial activity section because an expropriation of property by a foreign state within its territory constitutes a quintessential governmental act and not an act within the purview of the

---

[1] Treaty of Amity, Economic Relations, and Consular Rights between the United States and Iran, June 6, 1957, 8 U.S.T. 899, T.I.A.S. No. 3853.

FSIA's commercial activity exception to sovereign immunity. (Pet. App. B, at 2-3).

Turning to Soudavar's contention that Articles III and IV of the Treaty of Amity conferred subject matter jurisdiction on the court, the district court ruled that neither Article contains a waiver of Iran's sovereign immunity. (Pet. App. B, at 3-4). Finally, the court ruled that the Alien Tort Claims Act did not provide subject matter jurisdiction in the instant suit against Iran. The Act only confers jurisdiction to hear tort claims by aliens against non-sovereign defendant, and only if international law or a treaty provided a cause of action. (*Id.* at 4).

The court of appeals affirmed the dismissal in a brief *per curiam* judgment. It ruled that Soudavar had failed to establish subject matter jurisdiction under the FSIA, the Alien Tort Act, or the Treaty of Amity. (Pet. App. A, at 2-3). Soudavar's petition for rehearing *en banc* was also denied.

REASONS FOR DENYING THE WRIT

1. The court of appeals' affirmance of the district court's ruling that Soudavar's compensation claim was not cognizable under the "direct effect" clause of the commercial activity exception to sovereign immunity, 28 U.S.C.§ 1605(a)(2), is on solid grounds. Iran's failure to pay compensation caused no "direct effect" in the United States since Iran was under no obligation to pay compensation in the United States. *Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607, 618-19 (1992), established authoritatively that only if a foreign state breaches a legal obligation to pay a commercial debt in the United States will the breach of such obligation create a "direct effect" in this country. Soudavar contends that since he is now a resident of this country Iran's non-payment of compensation affects him directly in the United States. The contention does not bear analysis. The nationalization occurred in Iran, and its effect was felt there. The fact that Iran subsequently extended an

offer of compensation in Iran which Soudavar rejected as inadequate does not bring his compensation claim within the ambit of the Court's *Weltover* decision.

In a final effort to vest jurisdiction under the FSIA, Soudavar argues that Iran's non-payment of compensation has yet another "direct effect" in the United States: it deprives the United States Treasury of revenue that it could collect if Soudavar were to collect compensation in the United States. The argument is palpably specious. Consequently, Soudavar's attempt to vest jurisdiction under the commercial section of the FSIA had to fail.

2. Soudavar once again advances the twisted argument that Treaty of Amity provides an alternate jurisdictional predicate for his suit and a private cause of action. He has advanced this theory for the past four years in two different district courts and in two circuit courts of appeals.[2] All courts found Soudavar's tortured treaty argument to be without substance. It is worthy of note that Soudavar also urged his treaty theory once before in this Court, *viz.*, in his unsuccessful 1999 petition for certiorari to the Fifth Circuit.

The essence of Soudavar's argument is that Articles III and IV[3] of the Treaty must be read "in tandem"(Pet. at 10), and he offers the following syllogism: (1) since Article III grants to Iranian nationals the same access to United

---

[2] The district court in Houston and the district court below; the Fifth Circuit in *Soudavar v. Islamic Republic of Iran*, 186 F.3d 671, *cert. denied*, 528 U.S. 1157 (1999), and the court of appeals below.

[3] Article III contains a "national treatment" clause that is found in most United States bilateral commercial treaties: it assures access to Iranian nationals to the courts of the United States on terms not less favorable than those available to United States nationals, and *vice versa*. Article IV deals with compensation for the taking of property by one state where the property belongs to nationals of the other state.

States courts as is enjoyed by United States nationals, and (2), since United States nationals have a right to sue Iran for compensation for the taking of their property in Iran, it follows (3) that Soudavar has "the same jurisdictional right" as United States nationals (*ibid.*) The syllogism is false. See, e.g., *Berkovitz v. Islamic Republicof Iran*, 735 F.2d 329, 333 (9th Cir.), *cert. denied*, 469 U.S. 1035 (1984) (limited waiver of Iran's immunity from suit extends only to enterprises "doing business" in the United States); *Harris Corp. v. Nat'l Iranian Radio & Television*, 691 F.2d 1344, 1350 (11th Cir. 1982)(same); *Chicago Bridge & Iron Co. v. Islamic Republic of Iran*, 506 F.Supp. 981, 984 (N.D. Ill.1980)(same).

Although the court of appeals did not address Soudavar's lack of standing to invoke the protection of the treaty against his own sovereign, the district court correctly noted that Article IV of the Treaty focuses solely on the property of nationals of one country within the territory of another state; it does not protect nationals against their own sovereign in the courts of the other country. (Pet. App. B, at 4).

In sum, the court of appeals was right in confirming the district court's ruling that Soudavar may not invoke Treaty of Amity as a jurisdictional fount for a suit against his own sovereign.

3. The court of appeals also confirmed the district court's holding that the Alien Tort Claims Act does not provide subject matter jurisdiction for a suit by an alien against his own sovereign. (Pet.App. B, at 3 n. 2) This Court's *Amerada Hess* opinion leaves no doubt that the Alien Tort Claims Act does not provide jurisdiction for suits against foreign states. (488 U.S. at 442).

CONCLUSION

Soudavar has set forth no reason why this Court should review the lower court's jurisdictional rulings. The court of appeals' holdings that FSIA , the Treaty of Amity and the Alien Tort Claims Act provided no subject matter jurisdiction to hear Soudavar's expropriation claim were fully consistent with existing law. Thus, the petition presents no occasion for further review by this Court and should be denied.

Dated: December 1, 2003

Respectfully submitted,

BRUNO A. RISTAU
Counsel of Record
LAW OFFICES OF
BRUNO A. RISTAU, P.L.L.C.
4500 Foxhall Crescents, N.W.
Washington, D.C. 20007
(202) 965-3810